

REMARKS

Until a revocation of the previous Power of Attorney and a new Power of Attorney are submitted in this case, undersigned is acting in a representative capacity in accordance with 37 CFR 1.34. Please address all further correspondence to:

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Please note the new attorney docket number which is "AZZOLINI=1", and please correct the PTO records in this regard.

The Official Action of December 1, 2005 and the prior art relied cited and applied therein have been noted. The claims in the application are now claims 1-3 and 4-29, and these claims define novel and unobvious subject matter and should be allowed. Such is respectfully requested.

Acknowledgement by the PTO of the receipt of applicant's papers filed under Section 119 is noted.

Claims 5-18 and 21-26 have been rejected under the second paragraph of Section 112. In addition, claims 27-29 have been rejected on the basis of the second paragraph of Section 112. These rejection are respectfully traversed.

The applicant believes that the claims as previously and originally drafted, considered in light of applicant's specification (fully consistent with the law), would not have been confusing to those skilled in the art, and therefore the rejected claims are fully in accordance with Section 112.

As regards claim 5 and the claims which depend therefrom, it is to be noted that claim 5 calls for the mixing duct to have at least two consecutive portions, the first portion having intake ports associated therewith, and the second portion having a discharge port associated therewith, e.g. see Fig. 1. Respectfully, applicant's claims are directed to those skilled in the art, and (again) it is entirely proper to consider applicant's claims in light of applicant's specification.

With regard to claim 27 and the claims which depend therefrom, applicant respectfully relies on MPEP 2173.05(e) which notes that antecedent basis need only be clear, not perfect, citing *Ex parte Porter*, 25 USPQ 2d 1144, 1145 (BPAI 1992). Again, applicant submits with respect that those skilled in the art reading applicant's claims 27-29 would not be confused.

Withdrawal of the rejections is in order and respectfully requested.

Claims 1-3, 5-8, 15, 16 and 18-20 have been rejected under Section 102 as anticipated by McPhee USP 3,677,248 (McPhee). This rejection is respectfully traversed.

Nevertheless, applicant need not address this rejection at the present time in view of the fact that claim 4 has not been included in this rejection. Claim 1 has now been amended to incorporate the feature of the dependent portion of claim 4, thus converting claim 1 into claim 4.

The amendment made above to claim 1 (converting claim 1 into claim 4) is made without prejudice to applicant's rights, including those rights provided by Sections 120 and 119, to pursue broader claims at a later date, including claims similar to claim 1 in its original form, if applicant chooses to do so.

Claim 9 has been rejected under Section 103 as obvious from McPhee. This rejection is respectfully traversed.

Again, applicant need not address this rejection at the present time in view of the amendment above converting claim 1 into what was previously claim 4.

Claims 4 and 22-29 have been rejected under Section 103 as obvious from McPhee in view of Heilman et al USP

5,569,181 (Heilman). This rejection is respectfully traversed.

First, applicant does not agree that McPhee discloses the device substantially as claimed, as stated in the rejection. Applicant believes that the prior art does not show a duct as claimed (e.g. see Fig. 2 for one embodiment of applicant's duct 10).

Heilman does indeed show a static mixer 20, but it would not be obvious how to incorporate such a static mixer 20 into the McPhee device. And even if such a static mixer 20 of Heilman were introduced into the McPhee device, the resultant reconstructed McPhee would still not correspond with claim 1.

Withdrawal of the rejection is therefore in order and is respectfully requested.

As regards claims 27-29, these depend from and incorporate the subject matter of claim 1 and are therefore patentable for the reasons indicated immediately above. Moreover, merely because Heilman discloses a three-way stop cock valve does not make it obvious to incorporate same into McPhee, let alone how this might be done.

Withdrawal of the rejection is in order and is respectfully requested.

Claims 10-13 have been rejected as obvious under Section 103 from McPhee in view of Elgas et al USP 5,823,987 (Elgas). This rejection is respectfully traversed.

Again, applicant respectfully submits that McPhee does not disclose the device substantially as claimed. Regardless, claims 10-13 depend from and incorporate the subject matter of claim 1 (now incorporating the subject matter of the dependent portion of claim 4). Elgas has not been cited to make up for the absence of the feature of claim 4 from McPhee, and has not been cited for that purpose. Accordingly, even if the combination were obvious, respectfully denied by applicant, the subject matter of claims 10-13 would not be reached by such combination.

Withdrawal of the rejection is in order and is respectfully requested.

Claim 17 has been rejected under Section 103 as obvious from McPhee in view of Beacham USP 3,042,038 (Beacham). This rejection is respectfully traversed.

Claim 17 depends from and incorporates the subject matter of claim 3 which incorporates the subject matter of claim 2 which in turn incorporates the subject matter of claim 1. Beacham has not been cited to make up for the deficiencies of McPhee as acknowledged (claim 4) and as pointed out above, and indeed does not do so. Therefore, even if the combination

were obvious (respectfully not admitted), the feature of claim 17 would not be reached.

Withdrawal of the rejection is in order and is respectfully requested.

Claim 18 depends from and incorporates the subject matter of claim 17. If McPhee does not anticipate claim 17, then applicant does not see how claim 18 can be said to be anticipated by McPhee. Applicant respectfully requests clarification.

The PTO states that claim 18 is deemed to add a statement of intended use, which in essence can be brushed aside or ignored as not constituting a differentiating feature of the claimed device. Applicant respectfully disagrees. First, no recitation which appears in a claim should be ignored, and there is abundant case law in support of this general proposition. Second, the dependent portion of claim 18 recites in essence that the valve is adapted to be normally open, and this is a structural feature.

The prior art documents of record and not relied upon by the PTO have been noted, along with the implication that such documents are deemed by the PTO to be insufficiently material to warrant their application against any of applicant's claims.

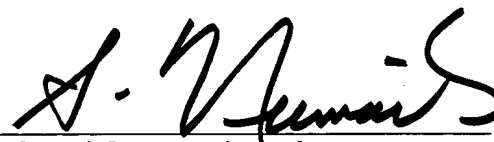
Appln. No. 10/698,513  
Amd. dated June 1, 2006  
Reply to Office Action of December 1, 2005

Applicant believes that all issues raised in the Office Action have been addressed above in a manner favorable to allowance of the present application. Accordingly, applicant respectfully requests favorable reconsideration and early formal allowance.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant

By

A handwritten signature in black ink, appearing to read "S. Neimark", written over a horizontal line.

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